

Appeal from decisions of Montana State Office, Bureau of Land Management, rejecting noncompetitive over-the-counter oil and gas lease offers. M-47415, M-47416, M-47418, and M-47419.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Filing -- Oil and Gas Leases:
First-Qualified Applicant

A noncompetitive oil and gas lease may be issued only to the first-qualified applicant. Where, on a noncompetitive over-the-counter lease offer, a corporate applicant refers to a corporate qualifications file which lists all officers of the corporation, compliance with 43 CFR 3102.2-5 has been accomplished even if the file fails to show that some of the listed officers hold more than one corporate office.

APPEARANCES: Gary G. Broeder, Esq., Billings, Montana, for appellant; David B. Soper, Esq., Englewood, Colorado, for appellee, Phillips Petroleum.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Frandy, Inc. (Frandy), has appealed from decisions of the Montana State Office, Bureau of Land Management (BLM), dated August 31 and September 1, 1981, rejecting its noncompetitive over-the-counter oil and gas lease offers, M-47415, M-47416, M-47418, and M-47419, for failure to comply with 43 CFR 3102.2-5(a) regarding submission of corporate qualifications, which permitted other offerors to obtain priority. 1/

1/ Two of the offers were totally rejected (NM-47415 and NM-47418) and two were rejected in part for this reason (NM-47416 and NM-47419). In addition, various lands in sec. 34, T. 5 N., R. 5 E., Principal meridian in lease offer NM-47415 and in sec. 4, T. 7 N., R. 4 E., Principal meridian in lease offer NM-47419 were rejected on the grounds that the United States held no mineral

Appellant's oil and gas lease offers were filed with BLM on June 23, 1980, for land situated in Meagher County, Montana. The offers were signed by its president, A. D. Matchett, and indicated that Frandy was a Montana corporation. The offers referred to BLM file M-06550 for verification of its previously filed corporate qualifications. The record shows that appellant had originally filed its corporate qualifications with BLM September 18, 1979, listing the persons authorized to sign lease offers and assignments as A. D. Matchett, president, and Frances L. Matchett, vice president.

BLM rejected the lease offers citing appellant's failure to comply with the regulations requiring current corporate qualifications and contending that at the time the offers were filed, the complete list of corporate officers had not been received. BLM noted that on August 19, 1980, an amendment to appellant's corporate qualifications was received, which listed Daniel A. Veeder as Secretary. BLM held that Frandy's offers only achieved priority as of August 18, 1980. During this period, however, intervening offers in conflict with those of appellant, had been filed. 2/ Accordingly, BLM ruled that these intervening offers became the first-qualified applicants for the leases.

In its statement of reasons appellant contends its corporate qualifications as listed in BLM file M-06550 were current as of June 23, 1980. It states that Frandy, Inc., is a closely held family corporation, which had, at the time lease offers were filed, only two individuals holding positions as corporate officers. As of the date of its lease offer, appellant argues, A. D. Matchett was president and treasurer, and Frances L. Matchett was vice president and secretary. These officers did not change until August 5, 1980, when David A. Veeder was elected as secretary to replace Frances L. Matchett for that office. 3/ Subsequently, on August 18, 1980, appellant submitted an amendment of the corporate qualifications statement to show the change in officers.

Appellant asserts its qualification statement was "complete" within the meaning of 43 CFR 3102.2-5(a)(3) because each individual holding a corporate

fn. 1 (continued)

interests therein. Also, a parcel described as lot 9, sec. 4., T. 9 N., R. 4 E., Principal meridian in lease offer NM-47419 was rejected because it did not conform to the land records and could not be identified. Appellant has not appealed from these latter two determinations and they are affirmed.

2/ Actually, two offers filed by Phillips Petroleum, NM-47243 and NM-47244, had been filed on the same day that appellant's offers had been filed. Thus, a simultaneous drawing had been required. See 43 CFR 3110.1-6(a). The other two offers involved, NM-48452 and NM-48486, had been filed by James D. Nelson on July 14 and July 30, 1980, respectively. 3/ Appellant has submitted with the appeal copies of the minutes of first meeting of its board of directors, June 1, 1979; minutes of the annual meeting of its board of directors, May 14, 1980; and minutes of the special meeting of its board of directors, Aug. 5, 1980, to substantiate the dates of the original slate of officers of the company and the dates of the corporate officer changes.

office of Frandy was identified even though each and every office held by said individual was not. Appellant argues that its filing satisfies the chief purpose of the regulation to prevent abuse of the lottery system.

Phillips Petroleum, the filer of two of the intervening offers, has responded that the BLM decision should be affirmed because appellant did not have on file a current "complete" listing of all officers, the individuals who held those offices, and their authority to act in oil or gas matters.

[1] A noncompetitive oil and gas lease for Federal lands may be issued only to the first-qualified applicant. McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Impel Energy Corp., 64 IBLA 92 (1982). In order to establish its qualifications to hold an oil and gas lease at the time of this filing, a corporation had to comply with 43 CFR 3102.2-5 (effective June 16, 1980, published in the Federal Register of May 23, 1980, 45 FR 35162), 4/ which required in pertinent part as follows:

(a) A corporation which seeks to lease shall submit with its offer, or application if leasing is in accordance with subpart 3112 of this title, a statement showing:

* * * * *

(3) a complete list of corporate officers identifying those authorized to act on behalf of the corporation in matters relating to Federal oil and gas leasing;

In this case BLM was given a reference to appellant's corporate qualifications already of record in file M-06550. As BLM noted, this procedure is permissible under 43 CFR 3102.2-1(c). In lieu of separate filings each time a corporate applicant files a new application, the corporate applicant may file an appropriate statement for reference in one of the BLM state offices requesting that it be given an identification number, and refer to that number on subsequent applications so long as it remained current. Amendments to the file could be attached to an application if the file was not current and reference to the file made to establish qualifications for a particular application. Redwood Empire Land and Royalty Co., 64 IBLA 267 (1982); Cimarron Corp., 61 IBLA 90 (1981).

BLM determined that the referenced file was not current as of the date of the filing of the lease offers. We disagree and find that appellant's offer was not defective as of June 23, 1980, and that appellant had made satisfactory compliance with the governing regulations on that date.

The BLM decisions did not indicate why the corporate qualifications on file on June 23, 1980, were incomplete. There are two possible justifications for its holding: (1) That it assumed that Veeder had been the secretary of Frandy as of June 23, 1980, and, thus, since he was not listed on

4/ On Feb. 26, 1982, the Department published interim final regulations which revised 43 CFR Subpart 3102 effectively eliminating the requirement to file the statement of corporate qualifications found in 43 CFR 3102.2-5. See 47 FR 8544 (Feb. 26, 1982).

the corporate qualifications current on June 23, 1980, Frandy's qualifications were not complete; or (2) the corporate qualifications of Frandy identified A. D. Matchett as president and Francis L. Matchett as vice president, when, in point of fact, each of these individuals held another position as a corporate officer, namely, A. D. Matchett was treasurer and Francis L. Matchett was secretary, which was not indicated in the corporate qualifications on file as of June 23, 1980.

Insofar as the first possibility is concerned, appellant has clearly established that Veeder was not the treasurer of Frandy until August 5, 1980, and, thus, to this extent, its qualifications as submitted were not in error. It seems equally clear, however, that the qualifications current as of June 23, 1980, did not show that A. D. and Francis L. Matchett held corporate offices in addition to that of president and vice president. The question to be decided is whether this omission necessitates rejection of their priority. We think not.

In Adobe Oil and Gas Corp., 63 IBLA 106 (1982), we examined the rationale animating the requirement that all corporate officers be identified. Therein we stated:

The purpose of requiring the disclosure of all corporate officers is to permit BLM to identify those situations where corporate officers and the corporation may have engaged in a multiple filing, in violation of 43 CFR 3112.6-1. See preamble to proposed revision of 43 CFR Part 3100, 44 FR 56177 (Sept. 28, 1979). As such, the aim is not to determine whether the corporation is a sole party in interest in a particular application; rather, it is to determine in what other applications for a particular parcel the corporation may have an interest, by virtue of other filings made by corporate officers.

Id. at 109. Thus, what is crucial to this regulation is the disclosure of all corporate officers. Appellant's qualifications, current as of June 23, 1980, did disclose all corporate officers; it merely failed to disclose that the officers held more than one corporate office. This technical failure in no way vitiated compliance with the purpose of the disclosure requirement, since it would be irrelevant for the purposes of ascertaining the existence of a multiple filing that a listed individual held another office in the corporation. It is the listing of each officer which effectuates the purpose of this regulation.

Appellee Phillips Petroleum suggests that information the corporate structure of an applicant is both important and necessary and that it might be extremely useful for the Department to know whether a lessee's corporate structure includes a secretary and/or treasurer. While we admit that there might well be situations where such knowledge could be of use, the regulation in question, as we have stated, is aimed at a different goal. Appellant's qualifications statement on file as of June 23, 1980, fully satisfied the purpose of the regulation. The failure to list all of the offices held by all of the officers must be deemed de minimis.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are reversed and remanded for action consistent herewith.

James L. Burski
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge